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FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			BRANDENBURG, WILLIAM A	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/676,369	Applicant(s) AGARWAL ET AL.	
	Examiner WILLIAM A. BRANDENBURG	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 25-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-24 and 33-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The following is a Non-Final Office Action in response to communications received on 04/03/2009 for Request for Continued Examination (RCE). Claims 1-8 and 25-32 have been withdrawn. No claims have been cancelled. Claims 9, 11-13, 15-17, 19-21, 23-24, 33, 35, 37, 41, 45 and 49 have been amended. No claims have been added. Therefore, claims 1-49 are pending and addressed below.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/03/2009 has been entered.

Specification

3. The amendment filed on 04/03/2009, has corrected the objections to the specification as identified in the Office Action dated 11/03/2008. Thus, the Examiner hereby withdraws the objections to the specification that were raised in the Office Action dated 11/03/2008.

Claim Objections

4. The amendment filed on 04/03/2009, has corrected the claim objections identified in the Office Action dated 11/03/2008. Thus, the Examiner hereby withdraws the claim objections of claim 49 that was raised in the Office Action dated 11/03/2008.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 9, 17, 33, 41 and 49 are rejected under 35

U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Applicant is now claiming that "the local time of interest information is descriptive of a local time for a remote computer that varies from a local time for the host" in claims 9, 17, 33, 41 and 49. Essentially, the Applicant is now requiring that the client and the host **must be** in separate local times (i.e. time of day, weekday, season, etc. as detailed in claim 10), which the Examiner notes in some cases is impossible, as is detailed in the 35 U.S.C. 112, 2nd paragraph rejection below. There is no clear support for such a concept in the original disclosure.

Any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion.

See MPEP 2173.05(i).

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The following is a quotation of the second paragraph of 35

U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9, 17, 33, 41 and 49 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9, 17, 33, 41 and 49 recite "**wherein the local time of interest information is descriptive of a local time for a remote computer that varies from a local time for the host**".

It is unclear to the Examiner how this limitation even has the possibility of functioning, particularly the underlined element.

As detailed in claim 10, local time of interest information can be that of local time-of-day, local date, local day-of-week range, or local season, just to name a few. The Examiner understands how someone on the West Coast could have a local time that varies from a host system on the East Coast.

However, after examining time zones more closely, this would mean that a client in Texas, which is a considerable distance from a host system in Chicago but still in the same time zone,

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could not receive any information from that host system. Moreover, taking the example of local information being a local season, this limitation would mean that a client in the southern hemisphere (i.e. winter) could only receive information from a host in the northern hemisphere (i.e. summer). It is unclear to the Examiner how these limitations could provide a properly functioning system. The Examiner notes that it appears the overall intent of the claimed invention is to deliver advertisements to users based on their local time information. Given that intent, why would it matter where the information is coming from?

Moreover, based on the specification (page 14), the "host" is simply a host site or website. As such, the host will always be at the client location and thereby according to the limitations cited above, the inventive steps would never occur. As such, claims 9, 17, 33, 41 and 49 are rejected for being indefinite. See MPEP 2173.

7. The Examiner notes the use of "means for" language claims 33 and 41, and further notes that since there is no specific definition in the application's description of what is included as a "means for," 35 U.S.C. § 112, sixth paragraph, is not properly invoked. See MPEP § 2181 (II).

8. Claims 33 and 41 are recited as an "apparatus" claim and as such, the Examiner expects to recognize structural elements as represented by the claimed limitations. However, it is unclear to the Examiner how "an input" and "means for" (which can be software per se), as recited in the body of the claim, represents structure. As such, claims 33 and 41 are rejected for being indefinite. See MPEP 2173. For the purposes of examination, the Examiner will treat this recitation as an "apparatus" claim, however any kind of module and/or structural element performing the limitations will satisfy the claim as currently written.

9. Claims 33 and 41 recite an input for "receiving" and "accessing". However it is unclear to the Examiner how an input, which based on the specification is not required to be a structural element, can perform the actions of "receiving" and "accessing". As such, claims 33 and 41 are rejected for being indefinite.

Claim Rejections - 35 USC § 101

10. The amendment filed on 04/03/2009, has corrected the 35 U.S.C. 101 deficiencies identified in the Office Action dated 11/03/2008. The Examiner notes that based on the specification (page 14), the "host" is simply a host site or website. As such, since these steps are performed on the host, the Examiner understands that even if the host is simply a website, the operations implicitly have to be completed via use of a machine. Thus, the Examiner hereby withdraws the 35 U.S.C. 101 rejections of claims 9 and 17 that were raised in the Office Action dated 11/03/2008.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. Claims 33 and 41 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 33 and 41 are recited as an "apparatus" claim and as such, the Examiner expects to recognize structural elements as represented by the claimed limitations. However, it is unclear to the Examiner how "an input" and "means for" (which can be

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software per se), as recited in the body of the claim, represents structure. The Examiner notes "an input", which is not required to be a structural element, and "means for" language, which can be construed as software modules, none of which are recorded on a computer-readable medium is considered data and/or descriptive material per se. As per MPEP 2106.01, descriptive material is non-statutory when claimed as descriptive material per se and not structurally or functionally interrelated to a computer-readable medium. Therefore, it is respectfully submitted that claims 33 and 41 are rejected under 35 U.S.C. 101 for being directed to non-statutory subject matter.

Claims 34-40 and 42-48 depend from claims 33 and 41, respectively, and do not cure the deficiencies set forth above. As such, claims 33-40 and 42-48 are also rejected for being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the

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differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 9-16, 19-20, 23-24, 33-40, 43-44 and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaser et al. (US 6,757,661 B1) (hereinafter Blaser).**

13. Please note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See e.g. *In re Collier*, 158 USPQ 266, 267 (CCPA 1968) (where the court interpreted the claimed phrase "a connector member for engaging shield means" and held that the shield means was not a positive element of the claim since "[t]here is no positive inclusion of 'shield means' in what is apparently intended to be a claim to structure consisting of a combination of elements."

As a courtesy, the Examiner has bolded and italicized the claim language consider as intended use.

14. As per claim 9, Blaser discloses a computer-implemented method for determining a score of an ad, the method being performed on a host and comprising:

receiving, using the host, local time of interest information associated with a request, wherein the local time of interest information is descriptive of a local time for a remote computer that varies from a local time for the host (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

Blaser does not explicitly disclose

accessing, using the host, an ad associated with local time of interest price information the local time of interest price information indicating a price for an ad in association with a local time;

determining, using the host, whether the local time of interest price information for the ad is related to the received local time of interest information; and

if it is determined that the local time of interest price information for the ad is related to the received local time of interest information, then using the host to determine a

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score for the ad using at least the local time of interest price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser

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pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

15. As per claim 10, Blaser discloses the method of claim 9 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

16. As per claim 11, Blaser discloses the method of claim 9 wherein the act of determining the score further comprises using at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

17. As per claim 12, Blaser discloses the method of claim 9 wherein the act of determining the score further comprises using at least local time of interest ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

18. As per claim 13, Blaser discloses the method of claim 9 wherein
the local time of interest information includes end user local time information provided in the request (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

19. As per claim 14, Blaser discloses the method of claim 13 wherein

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the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

20. As per claim 15, Blaser discloses the method of claim 13 wherein the act of determining the score further comprises using at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

21. As per claim 16, Blaser discloses the method of claim 13 wherein the act of determining the score further comprises using at least end user local time ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

22. As per claim 19, Blaser discloses the method of claim 17.

Blaser does not explicitly disclose wherein

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the act of determining the score further comprises using at least ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser

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pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

23. As per claim 20, Blaser discloses the method of claim 17.

Blaser does not explicitly disclose wherein

the act of determining the score further comprises using at least local time of interest ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has

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scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the

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teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

24. As per claim 23, Blaser discloses the method of claim 21.

Blaser does not explicitly disclose wherein the act of determining the score further comprises
using at least ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to

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be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would

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be obvious for Blaser to include specific price information to ensure cost-effectiveness.

25. As per claim 24, Blaser discloses the method of claim 21.

Blaser does not explicitly disclose wherein the act of determining the score further comprises
using at least end user local time ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

26. As per claim 33, Blaser discloses an apparatus for determining a score of an ad, the apparatus comprising:
an input **for:**

receiving local time of interest information associated

with a request, wherein the local time of interest information is descriptive of a local time for a remote computer that varies from a local time for a host, and (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements)

Blaser does not explicitly disclose

accessing an ad associated with local time of interest

price information, the local time of interest price information indicating a price for an ad in association with a local time;

means for determining whether the local time of interest price information for the ad is related to the received local time of interest information; and

means for determining the score for the ad using at least the local time of interest price information if it is determined that the local time of interest price information for the ad is related to the received local time of interest information.

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However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the

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advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

27. As per claim 34, Blaser disclose the apparatus of claim 33 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

28. As per claim 35, Blaser discloses the apparatus of claim 33 wherein

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the means for determining the score further use at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

29. As per claim 36, Blaser discloses the apparatus of claim 33 wherein

the means for determining the score further use at least local time of interest ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

30. As per claim 37, Blaser discloses the apparatus of claim 33 wherein

the local time of interest information is end user local time information provided in the request (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

31. As per claim 38, Blaser discloses the apparatus of claim 37 wherein

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the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

32. As per claim 39, Blaser discloses the apparatus of claim 37 wherein

the means for determining the score further use at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

33. As per claim 40, Blaser discloses the apparatus of claim 37 wherein

the means for determining the score further use at least end user local time ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

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34. As per claim 43, Blaser discloses the apparatus of claim 41.

Blaser does not explicitly disclose wherein

the means for determining the score further use at least ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

35. As per claim 44, Blaser discloses the apparatus of claim 41.

Blaser does not explicitly disclose wherein

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the means for determining the score further use at least local time of interest ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser

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pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

36. As per claim 47, Blaser discloses the apparatus of claim 45.

Blaser does not explicitly disclose wherein

the means for determining the score further use at least ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client

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(column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines 12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does

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not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

37. As per claim 48, Blaser discloses the apparatus of claim 45.

Blaser does not explicitly disclose wherein

the means for determining the score further use at least end user local time ad price information.

However, Blaser teaches receiving information from the client to determine which information should be sent to the client (column 6, lines 19-27). The data sent to the users has scheduling requirements including the time of day to send (column 6, lines 56-65). The advertisement table includes the preferred times of day at which the advertisement is displayed to users as well as performance information (column 10, lines

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12-32). A playlist, containing ad objects, specifies an order in which the advertisements identified in the play list are to be displayed. The playlist also specifies the amount of time that each advertisement is to be displayed (column 10, lines 51-63). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed in Blaser. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is a common practice in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI). The Examiner notes that although Blaser does not explicitly teach prices associated with time, the teachings with regards to the serving the ads at particular times substantiate the fact the advertisers have essentially bid for serving ads only at those particular times. For any other time, the bid associated with those ads can be

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considered zero, as there are no ads served. As such, it would be obvious for Blaser to include specific price information to ensure cost-effectiveness.

38. As per claim 49, Blaser discloses a computer-readable medium having embodied thereon a computer program configured to provide digital advertisements, the medium comprising one or more code segments, that, when executed on a processor, cause the processor to:

receive a request for one or more digital advertisements in response to user input from an end user (column 9, lines 19-40, user requests data for OSP server, see also column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements);

receive end user local time of interest information associated with the request, wherein the local time of interest information is descriptive of a local time for a remote computer that varies from a local time for a host (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements),

for at least one of a plurality of digital advertisements:

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provide the digital advertisement with a highest score in response to the received request (column 12, lines 1-53, correlation or match between the user and the pool of available advertisements, OSP server performs a best fit-analysis between the user and the available advertisements and compiles a list of advertisements that are particularly suited for the user, a set of best-fit advertisements for the user is then compiled by the OSP server, play list established based on best-fit analysis, user is regularly provided with an update optimized player).

Blaser does not explicitly disclose

determine whether the digital advertisement has local time of interest price information that is related to the local time of interest information received; and

if it is determined that the digital advertisement has local time of interest price information is related to the local time of interest information accepted, then determine a score using at least the local time of interest price information.

However, Blaser teaches examining ad performance in similar demographics (column 14, lines 15-20) and comparing

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performance records with ad targeting criterion (column 13, lines 9-16). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the

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United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

39. Claims 17-18, 21-22, 41-42 and 45-46 are rejected under 35

U.S.C. 102(e) as being anticipated by Blaser et al. (US

6,757,661 B1) (hereinafter Blaser).

40. As per claim 17, Blaser discloses a computer-implemented method for determining a score of an ad, the method being performed on a host and comprising:

receiving, using the host, local time of interest information associated with a request, wherein the location time of interest information is descriptive of a local time for a remote computer that varies from a local time for the host (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements);

accessing, using the host, an ad associated with local time of interest performance information, the local time of interest performance information indicating a performance for an ad in association with a local time (column 3, lines 39-47, information received from user, best-fit match is performed

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and advertisements are displayed to the users accordingly, based on the performance, the ad server refines the best-fit matches and display order for the user, see also column 10, lines 12-63);

determining, using the host, whether the local time of interest performance information for the ad is related to the received local time of interest information (Fig. 8, "815", see also column 14, lines 15-20, ad performance examined to determine if ad exhibits a strong response from other users in similar demographic) ; and

if it is determined that the local time of interest performance information for the ad is related to the local time of interest information accepted, then using the host to determine the score for the ad using at least the local time of interest performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

41. As per claim 18, Blaser discloses the method of claim 17 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day

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range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range, (f) at least one local day-of-week range (column 6, lines 56-62, first and last days to send), and (g) at least one local season.

42. As per claim 21, Blaser discloses the method of claim 17 wherein

the local time of interest information includes end user local time information (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

43. As per claim 22, Blaser discloses the method of claim 21 wherein

the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range, (f) at least one local day-of-week range (column 6, lines 56-62, first and last days to send), and (g) at least one local season.

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44. As per claim 41, Blaser discloses an apparatus for determining a score of an ad, the apparatus comprising:

an input **for:**

receiving local time of interest information associated

with a request, wherein the local time of interest information is descriptive of a local time for a remote computer that varies from a local time for a host, and (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements)

accessing an ad associated with local time of interest performance information, the local time of interest performance information indicating a performance for an ad in association with a local time (column 3, lines 39-47, information received from user, best-fit match is performed and advertisements are displayed to the users accordingly, based on the performance, the ad server refines the best-fit matches and display order for the user, see also column 10, lines 12-63);

means for determining whether the local time of interest performance information for the ad is related to the received local time of interest information (column 14, lines 15-20, ad performance examined to determine if ad exhibits a strong

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response from other users in similar demographic, see also column 6, lines 20-23, OSP server uses client information to determine ads to be sent); and

means for determining the score for the ad using at least the local time of interest performance information if it is determined that the local time of interest performance information for the ad is related to the received local time of interest information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

45. As per claim 42, Blaser discloses the apparatus of claim 41 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

46. As per claim 45, Blaser discloses the apparatus of claim 41 wherein

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the local time of interest information includes end user local time information (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

47. As per claim 46, Blaser discloses the apparatus of claim 45 wherein

the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

Response to Arguments

48. Applicant's arguments with respect to independent claims 9, 17, 33, 41 and 49, **as amended**, have been considered but are moot in view of the new ground(s) of rejection as necessitated by amendment.

Conclusion

49. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

50. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM A. BRANDENBURG whose telephone number is (571)270-5488. The examiner can normally be reached on Monday-Thursday 6:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

W.B.
/W. A. B./
Examiner, Art Unit 3622

John Van Bramer
/John Van Bramer/
Examiner, Art Unit 3622